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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RICKY DAVIS,

Plaintiff,

vs.

COUNTY OF EL DORADO, et al.

Defendants.

) Case No.: 2:22-cv-00262-MCE-JDP

) **STIPULATED PROTECTIVE ORDER**

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. This is likely to include medical records, sensitive information contained within personnel files, and third party sensitive information such as citizen complaints.

Accordingly, the parties hereby stipulate to the following Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery, and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Order does not entitle them to file confidential information under seal; Local Rule 141 sets forth the

1 procedures that must be followed and the standards that will be applied when a party seeks
2 permission from the court to file material under seal.

3 2. DEFINITIONS

4 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
5 information or items under this Order.

6 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is
7 generated, stored, or maintained) or tangible things that qualify for protection under Federal Rule
8 of Civil Procedure 26(c), including medical records, sensitive information contained within
9 personnel files, and third party sensitive information such as citizen complaints.

10 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
11 well as their support staff).

12 2.4 Designating Party: a Party or Non-Party that designates information or items that it
13 produces in disclosures or in responses to discovery as "CONFIDENTIAL."

14 2.5 Disclosure or Discovery Material: all items or information, regardless of the
15 medium or manner in which it is generated, stored, or maintained (including, among other things,
16 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
17 responses to discovery in this matter.

18 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
19 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
20 consultant in this action.

21 2.7 House Counsel: attorneys who are employees of a party to this action. House
22 Counsel does not include Outside Counsel of Record or any other outside counsel.

23 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
24 entity not named as a Party to this action.

25 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this
26 action but are retained to represent or advise a party to this action and have appeared in this action
27 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

28 2.10 Party: any party to this action, including all of its officers, directors, employees,

1 consultants, retained experts, and Outside Counsel of Record (and their support staff).

2 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
3 Material in this action.

4 2.12 Professional Vendors: persons or entities that provide litigation support services
5 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
6 organizing, storing, or retrieving data in any form or medium) and their employees and
7 subcontractors.

8 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
9 "CONFIDENTIAL."

10 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
11 Producing Party.

12 3. SCOPE

13 The protections conferred by this Order cover not only Protected Material (as defined
14 above), but also (1) any information copied or extracted from Protected Material; (2) all copies,
15 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations,
16 or presentations by Parties or their Counsel that might reveal Protected Material. However, the
17 protections conferred by this Order do not cover the following information: (a) any information
18 that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the
19 public domain after its disclosure to a Receiving Party as a result of publication not involving a
20 violation of this Order, including becoming part of the public record through trial or otherwise;
21 and (b) any information known to the Receiving Party prior to the disclosure or obtained by the
22 Receiving Party after the disclosure from a source who obtained the information lawfully and
23 under no obligation of confidentiality to the Designating Party. Any use of Protected Material at
24 trial shall be governed by a separate agreement or order.

25 4. DURATION

26 Even after final disposition of this litigation, the confidentiality obligations imposed by this
27 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
28 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims

1 and defenses in this action, with or without prejudice; and (2) final judgment herein after the
2 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
3 including the time limits for filing any motions or applications for extension of time pursuant to
4 applicable law.

5 5. DESIGNATING PROTECTED MATERIAL

6 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
7 or Non-Party that designates information or items for protection under this Order must take care
8 to limit any such designation to specific material that qualifies under the appropriate standards.
9 The Designating Party must designate for protection only those parts of material, documents,
10 items, or oral or written communications that qualify, so that other portions of the material,
11 documents, items, or communications for which protection is not warranted are not swept
12 unjustifiably within the ambit of this Order.

13 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
14 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
15 unnecessarily encumber or impede the case development process or to impose unnecessary
16 expenses and burdens on other parties) expose the Designating Party to sanctions.

17 If it comes to a Designating Party's attention that information or items that it designated for
18 protection do not qualify for protection, that Designating Party must promptly notify all other
19 Parties that it is withdrawing the mistaken designation.

20 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
21 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
22 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
23 designated before the material is disclosed or produced. Designation in conformity with this Order
24 requires:

25 (a) for information in documentary form (e.g., paper or electronic documents,
26 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
27 Party affix the legend "CONFIDENTIAL" to each page that contains protected material. If only
28 a portion or portions of the material on a page qualifies for protection, the Producing Party also

1 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
2 margins).

3 A Party or Non-Party that makes original documents or materials available for inspection
4 need not designate them for protection until after the inspecting Party has indicated which material
5 it would like copied and produced. During the inspection and before the designation, all of the
6 material made available for inspection shall be deemed "CONFIDENTIAL." After the inspecting
7 Party has identified the documents it wants copied and produced, the Producing Party must
8 determine which documents, or portions thereof, qualify for protection under this Order.

9 Then, before producing the specified documents, the Producing Party must affix the
10 "CONFIDENTIAL" legend to each page that contains Protected Material. If only a portion or
11 portions of the material on a page qualifies for protection, the Producing Party also must clearly
12 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

13 (b) for testimony given in deposition or in other pretrial or trial proceedings,
14 that the Designating Party identify on the record, before the close of the deposition, hearing, or
15 other proceeding, all protected testimony.

16 (c) for information produced in some form other than documentary and for any
17 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
18 container or containers in which the information or item is stored the legend "CONFIDENTIAL."
19 If only a portion or portions of the information or item warrant protection, the Producing Party, to
20 the extent practicable, shall identify the protected portion(s).

21 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
22 designate qualified information or items does not, standing alone, waive the Designating Party's
23 right to secure protection under this Order for such material. Upon timely correction of a
24 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
25 in accordance with the provisions of this Order.

26 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

27 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
28 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality

1 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
2 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
3 challenge a confidentiality designation by electing not to mount a challenge promptly after the
4 original designation is disclosed.

5 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
6 process by providing written notice of each designation it is challenging and describing the basis
7 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
8 notice must recite that the challenge to confidentiality is being made in accordance with this
9 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
10 good faith and must begin the process by conferring within 14 calendar days of the date of service
11 of notice. In conferring, the Challenging Party must explain the basis for its belief that the
12 confidentiality designation was improper and must give the Designating Party an opportunity to
13 review the designated material, to reconsider the circumstances, and, if no change in designation
14 is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to
15 the next stage of the challenge process only if it has engaged in this meet and confer process first
16 or establishes that the Designating Party is unwilling to participate in the meet and confer process
17 in a timely manner.

18 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
19 intervention, the parties shall follow the procedures set forth in Local Rule 251 to resolve the
20 challenge. The burden of persuasion in any such challenge proceeding shall be on the Designating
21 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
22 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
23 sanctions. Until the court rules on the challenge, the Parties shall continue to afford the material
24 in question the level of protection to which it is entitled under the Producing Party's designation.

25 7. ACCESS TO AND USE OF PROTECTED MATERIAL

26 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
27 or produced by another Party or by a Non-Party in connection with this case only for prosecuting,
28 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only

1 to the categories of persons and under the conditions described in this Order. When the litigation
2 has been terminated, a Receiving Party must comply with the provisions of Section 13 below.

3 Protected Material must be stored and maintained by a Receiving Party at a location and in
4 a secure manner that ensures that access is limited to the persons authorized under this Order.

5 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
6 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
7 information or item designated "CONFIDENTIAL" only to:

8 (a) the Receiving Party's Outside Counsel of Record and insurance
9 company/TPA in this action, as well as employees of said Outside Counsel of Record or insurance
10 company/TPA to whom it is reasonably necessary to disclose the information for this litigation
11 and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto
12 as Exhibit A;

13 (b) the officers, directors, and employees (including House Counsel) of the
14 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed
15 the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

16 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
17 is reasonably necessary for this litigation and who have signed the "Acknowledgment and
18 Agreement to Be Bound" (Exhibit A);

19 (d) the court and its personnel;

20 (e) court reporters and their staff, professional jury or trial consultants, mock
21 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and
22 who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

23 (f) during their depositions, witnesses in the action to whom disclosure is
24 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
25 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. If counsel
26 for the parties stipulate, or the Designating Party requests separate binding of Protected Material,
27 pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material
28 must be separately bound by the court reporter and may not be disclosed to anyone except as

1 permitted under this Stipulated Protective Order;

2 (g) the author or recipient of a document containing the information or a
3 custodian or other person who otherwise possessed or knew the information.

4 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
5 LITIGATION

6 If a Party is served with a subpoena or a court order issued in other litigation that compels
7 disclosure of any information or items designated in this action as "CONFIDENTIAL," that Party
8 must:

9 (a) promptly notify in writing the Designating Party. Such notification shall include a
10 copy of the subpoena or court order;

11 (b) promptly notify in writing the party who caused the subpoena or order to issue in
12 the other litigation that some or all of the material covered by the subpoena or order is subject to
13 this Protective Order. Such notification shall include a copy of this Stipulated Protective Order;
14 and

15 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
16 Designating Party whose Protected Material may be affected.

17 If the Designating Party timely seeks a protective order, the Party served with the subpoena
18 or court order shall not produce any information designated in this action as "CONFIDENTIAL"
19 before a determination by the court from which the subpoena or order issued, unless the Party has
20 obtained the Designating Party's permission. The Designating Party shall bear the burden and
21 expense of seeking protection in that court of its confidential material, and nothing in these
22 provisions should be construed as authorizing or encouraging a Receiving Party in this action to
23 disobey a lawful directive from another court.

24 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
25 LITIGATION

26 (a) The terms of this Order are applicable to information produced by a Non-Party in
27 this action and designated as "CONFIDENTIAL." Such information produced by Non-Parties in
28 connection with this litigation is protected by the remedies and relief provided by this Order.

1 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
2 additional protections.

3 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
4 Party's confidential information in its possession, and the Party is subject to an agreement with the
5 Non-Party not to produce the Non-Party's confidential information, then the Party shall:

6 (1) promptly notify in writing the Requesting Party and the Non-Party that
7 some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

8 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
9 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of
10 the information requested; and

11 (3) make the information requested available for inspection by the Non-Party.

12 (c) If the Non-Party fails to object or seek a protective order from this court within 14
13 days of receiving the notice and accompanying information, the Receiving Party may produce the
14 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely
15 seeks a protective order, the Receiving Party shall not produce any information in its possession
16 or control that is subject to the confidentiality agreement with the Non-Party before a
17 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the
18 burden and expense of seeking protection in this court of its Protected Material.

19 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

20 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
21 Material to any person or in any circumstance not authorized under this Stipulated Protective
22 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
23 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected
24 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the
25 terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and
26 Agreement to Be Bound" that is attached hereto as Exhibit A.

1 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
2 MATERIAL

3 When a Producing Party gives notice to Receiving Parties that certain inadvertently
4 produced material is subject to a claim of privilege or other protection, the obligations of the
5 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
6 is not intended to modify whatever procedure may be established in an e-discovery order that
7 provides for production without prior privilege review. Pursuant to Federal Rule of Evidence
8 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
9 communication or information covered by the attorney-client privilege or work product protection,
10 the parties may incorporate their agreement in the stipulated protective order submitted to the
11 court.

12 12. MISCELLANEOUS

13 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
14 seek its modification by the court in the future.

15 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
16 Order no Party waives any right it otherwise would have to object to disclosing or producing any
17 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
18 no Party waives any right to object on any ground to use in evidence of any of the material covered
19 by this Protective Order.

20 12.3 Filing Protected Material. Without written permission from the Designating Party
21 or a court order secured after appropriate notice to all interested persons, a Party may not file in
22 the public record in this action any Protected Material. A Party that seeks to file under seal any
23 Protected Material must comply with Local Rule 141. Protected Material may only be filed under
24 seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If
25 a Receiving Party's request to file Protected Material under seal pursuant to Local Rule 141 is
26 denied by the court, then the Receiving Party may file the information in the public record unless
27 otherwise instructed by the court.

13. FINAL DISPOSITION

Within 60 calendar days after the final disposition of this action, as defined in Section 4, upon written notification served by the Producing or Designating Party, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed, and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries, or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: October 17, 2023

ANGELO, KILDAY & KILDUFF, LLP

/s/ Derick E. Konz

By: _____

DERICK E. KONZ

JACOB J. GRAHAM

Attorneys for Defendants COUNTY OF
EL DORADO and TERESA PIPER

Dated: October 17, 2023

MCLANE, BEDNARSKI & LITT, LLP

/s/ Laura Donaldson

(Auth. on Oct. 6, 2023)

By: _____

DAVID MCLANE
LAURA DONALDSON
Attorneys for Plaintiff RICKY DAVIS

Dated: October 17, 2023

RANKIN, SHUEY, MINTZ, LAMPASONA
& REYNOLDS

/s/ David T. Shuey
(Auth. on Oct. 6, 2023)

By: _____
DAVID T. SHUEY
Attorneys for Defendant DR. ROBERT
ANTHONY

Dated: October 17, 2023

EVANS, WIECKOWSKI, WARD &
SCOFFIELD, LLP

/s/ Carol Wieckowski
(Auth. on Oct. 3, 2023)

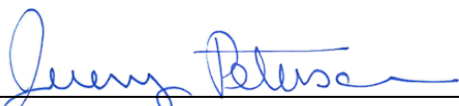
By: _____
CAROL WIECKOWSKI
Attorneys for STRASSER and
FITZGERALD

ORDER

PURSUANT TO STIPULATION,

IT IS SO ORDERED.

Dated: October 17, 2023



JEREMY D. PETERSON
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Eastern District of California on
_____ [date] in the case of *Davis v. County of El Dorado, et al.*, No. 2:22-cv-
00262-MCE-JDP. I agree to comply with and to be bound by all the terms of this Stipulated
Protective Order and I understand and acknowledge that failure to so comply could expose me to
sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in
any manner any information or item that is subject to this Stipulated Protective Order to any person
or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Eastern District of California for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone
number] as my California agent for service of process in connection with this action or any
proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where
sworn and signed: _____

Printed Name: _____

Signature: _____